

REMARKS

The herein Amendment is responsive to the Office Action received on November 9, 2005 in which claims 1-10 were rejected under 35 U.S.C. 103(a) as being unpatentable over Iino, Japanese Patent No. 2000253922, in view of various secondary U.S. patents and U.S. patent publication prior art. Applicant gratefully acknowledges the allowance of claim 11. The Office Action indicated a final rejection, which rejection is premature and thus is respectively traversed.

By this Amendment, applicant requests reconsideration of the final rejection status noted in the recently received Office Action. The primary reference used to reject the claims of the most recent Office Action, Iino, represents newly submitted prior art and new grounds for rejection. The initial Office Action in this matter dated July 5, 2005, stated a rejection based on prior art which post-dated the priority of the subject application. This subsequent Office Action withdrew the prior rejection and entered totally new grounds of rejection based on newly cited prior art. As a result, this second action on the merits should not be made final, since it includes rejections of claims not previously amended, based on newly cited prior art. MPEP § 706.07(a). As the application is not properly under final rejection status, entry of the herein Amendment is requested.

More importantly, applicant has amended the sole remaining non-allowable independent claim in the application, claim 1, to overcome the primary applied prior art, the Japanese patent to Iino. Claim 1, as amended, now describes a hair clip assembly for use on portions of hairs pretreated by a treatment chemical and on new hair growth portions not previously treated by treatment chemical. The hair clip assembly, as now claimed, comprises a first jaw member, a second jaw member substantially the same size as the first jaw member pivotably attached to the first jaw member by a hinge such that the pivotal attachment permits the jaw members to assume open and closed positions in relation to each other by movement of the jaw members toward and

away from each other. Each of the jaw members has a first and second end and a number of surfaces. The claim goes on to recite a coiled spring in proximity to the adjacent first ends of the jaw members to bias the jaw members towards the closed position such that, in the closed position, all the surfaces of the jaw members are substantially adjacent and parallel to the correspondence surfaces of the second jaw member. The claim further recites first and second separate unitary hair shields, each one extending perpendicularly from a jaw member, such that when the jaw members are biased in the closed position, the two shields are also biased closed such that their internally oriented surfaces are pressed substantially flushed against each other; and while the hair clip assembly is being used to protect the pretreated portions of the hair during application of treatment chemical to the new hair, the jaw members are closed and the pretreated portions of the hair are sandwiched between the internal surfaces of the two hair shields, such that the hair shields cover and protect the pretreated portions of the hair from needless exposure to the treatment chemical.

Claim 1, as amended, now clearly reads over the Japanese patent to Iino. Iino discloses a single sheet of material over and in which hair is placed. The clip which is used to hold the hair onto the sheet appears to be secured on the outside of the upper half of one side of the sheet and does not have two jaw members substantially the same size, pivotably attached to each other by a hinge which permits the jaw members to assume open and closed positions by movement of the jaw members toward and away from each other. The clip does not have a coiled spring in proximity to the adjacent first ends of the jaw members such that the coil spring biases the jaw members towards the closed position, biasing all the surfaces of the first jaw member substantially adjacent and parallel to the corresponding surfaces of the second jaw member. Iino does not even show a coiled spring and there is no teaching which practically and realistically shows how or why a spring would be employed, secondarily, on the clip of Iino. Simply stated,

the jaw members, as now currently claimed, present a completely different and unique clip configuration than which is shown in Iino.

Moreover, claim 1 now also recites two separate hair shields extending perpendicularly from the upper surface of the first and second jaw members. Once again, Iino shows neither two separate shields and certainly nothing extending perpendicularly from the uniquely claimed jaw members akin to the present invention. Claim 1 further states that each hair shield has an internally oriented surface, wherein when the jaw members are biased in the closed position, the two shields are also biased closed such that their internally oriented surfaces are pressed substantially flush against each other. Since Iino does not show two shields, it naturally does not disclose that two shields are so biased and so positioned.

In view of the revision to independent claim 1, it is respectfully submitted that Iino can not now be considered prior art competent to reject the claims of this application. It is thus respectfully submitted that claim 1 is now allowable over the prior art and, as a result, so too are claims 2-10, the claims dependent on claim 1.

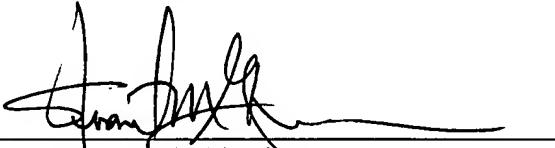
The applicant thanks the examiner for the courtesies granted in a telephone interview on December 5, 2005. During that interview, the above noted revisions to claim 1 were discussed, especially how these revisions now clearly distinguish over the Iino reference. The examiner also agreed that the entry of final rejection was premature and that the final rejection would be withdrawn and the herein Amendment entered.

It is submitted that independent claim 1, as now amended, is allowable, along with its dependent claims 2-10 and previously allowed claim 11. This Amendment places the application in condition for allowance.

If the examiner, upon review of the herein Amendment, believes that additional changes may be appropriate to advance the prosecution of this application, she is kindly requested to contact the undersigned.

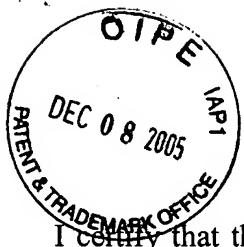
Respectfully submitted,

HOLLSTEIN KEATING
CATTELL JOHNSON & GOLDSTEIN P.C.

By: 

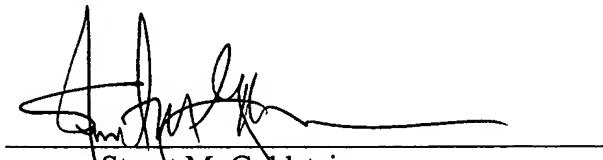
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Dated: December 8, 2005



CERTIFICATION OF SERVICE

I certify that the Amendment in Response to Final Rejection was sent to Robyn Doan, Examiner, Art Unit 3732, Commissioner of Patents and Trademarks, P.O. Box 1450, Alexandria, Virginia 22313-1450, via Express Mail # EV 732196824 US on December 8, 2005.



Stuart M. Goldstein
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A handwritten signature of Stuart M. Goldstein is written over a horizontal line. Below the signature, the name "Stuart M. Goldstein" is typed in a standard font, followed by "Registration No. 28817" on a separate line.